IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21907 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RASIKLAL SHAMBHUBHAI KAKADIA
Versus
KANAIYALAL LILADHAR BHAVSAR

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Appearance :
MR MAJMUDAR for the Petitioner
MR SK PATEL for the Respondent

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 17/04/2007

ORAL JUDGMENT

1. **RULE**. Learned Advocate Mr.S.K.Patel waives service of Rule on behalf of the respondent.

2. The petitioner – original defendant No.1 is before this Court being aggrieved by order passed below Exh.38 in Special Civil Suit No.48 of 2005 by the learned Principal Senior Civil Judge, Surat dated 04.10.2005.

3. Exh.38 was filed praying that Manager, Dena Bank, Rampura Branch, Surat be called as a witness along with the card bearing signature of the account holder being account number 46691, in the name of 'Liladhar Dahyabhai', resident of Mahidharpura, Vaniya Sheri, Surat.

In Exh.38, defendant No.1 – petitioner herein had prayed that (i) Talati-cum-Mantri, Katargam, Surat, (ii) Collector, N.A. Braanch, Surat and (iii) D.C.B., Furja Chowk, Surat be also called as witnesses. Later on, learned Advocate for the defendant decided not to press the application, except for the Manager, Dena Bank, Rampura Branch, Surat.

4. The application is rejected by the learned Principal Senior Civil Judge, Surat on the ground that the matter is pending at Exh.5 hearing stage. The learned Judge has recorded that arguments of the learned Advocate for the plaintiff are over.

What follows is important. The learned Judge has observed that, 'the signature can be ascertained with the help of the evidence; that the opinion of the expert on both the sides is already on record; that a request is made by the defendant that the Court may compare the signature by calling the bank-card; but for that purpose,

the application cannot be accepted'.

The learned Judge relied upon a decision of this Court in the matter of **MANSUKHLAL PUJALAL VS. ASSISTANT COMMISSIONER AND OTHERS**, reported in 1995 (2) GLH 712. This Court, in the facts of that case, held that, 'application for interim relief – application for discovery or inspection or production or interrogatory with a view to delay the hearing of application for interim relief requires to be deprecated'. The Court also held that, 'the Court should decide the application for interim relief on the basis of material available at the time of granting ex parte interim relief'.

The facts in the case on hand are different then the facts in which the aforesaid decision was rendered and therefore, the said decision has no application to the facts of the present case.

5. Learned Advocate for the petitioner relied upon a decision of this Court in the matter of **NAREN ADVERTISING & MARKETING AND ANOTHER VS. STAE BANK OF SAURASHTRA AND ANOTHER**, reported in 2001 (3) GLR 2671, wherein the Court was pleased to hold that:

> "In order to do real justice, the Court is empowered to compel attendance of any person as a witness and for that purpose may issue a summons – Delay in

presenting an applicatioin would not be fatal in all cases – Court found this to be fit case for issuing a witness summons."

6. Mr.S.K.Patel, learned Advocate for the respondent vehemently argued that this is a case wherein the application is filed when Exh.5 application was pending at the hearing stage.

It is required to be noted here that in the case on hand, interim relief is granted in favour of the plaintiff and he is enjoying the interim relief. In such circumstances, if the defendant files an application by which the hearing is delayed, it is the plaintiff who is benefited and not the defendant.

7. Learned Advocate for the respondent submitted that if present application is allowed, the plaintiff is going to be prejudiced because the Court will compare the signature of the party by visual comparison.

The apprehension of learned Advocate for the respondent is misplaced inasmuch as, the learned Judge has already recorded that the expert's opinion on both the sides is on record. That being so, there is no prejudice which is likely to be caused if the person named in the application Exh.38 is called as witness.

8. Learned Advocate for the respondent next submitted that the learned Judge has not committed any error much less a jurisdictional error which will warrant interference at the hands of this Court.

The submissions of Mr.Patel, learned Advocate for the respondent are found without any substance.

9. In view of the discussion hereinabove, it is deemed fit that the order passed below Exh.38 dated 04.10.2005 be quashed and set aside. Order accordingly. Exh.38 is allowed. Manager, Dena Bank, Rampura Branch, Surat to be examined as witness. The petition is allowed. Rule is made absolute with no order as to costs.

(RAVI R.TRIPATHI, J.)

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